



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,755	03/29/2006	Hiroshi Fukushima	NPR-185	3987

20374 7590 07/12/2010
KUBOVCIK & KUBOVCIK
SUITE 1105
1215 SOUTH CLARK STREET
ARLINGTON, VA 22202

EXAMINER

MARCETICH, ADAM M

ART UNIT	PAPER NUMBER
----------	--------------

3761

MAIL DATE	DELIVERY MODE
-----------	---------------

07/12/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,755	Applicant(s) FUKUSHIMA ET AL.	
	Examiner Adam Marcetich	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,13,14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,13,14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/06/2010, 04/06/2010,05/17/2010</u> . | 6) <input checked="" type="checkbox"/> Other: <u>NPL x2</u> . |

DETAILED ACTION

Priority

1. Acknowledgment is made of Applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). A certified copy of parent Application No. Japan 2003-340851, filed on 30 September 2003 has been received. A priority date of 30 September 2003 is given to claims 1-4, 7, 10-16.

Claim Interpretation

2. Amended claim 13 calls for a plurality of separation display sections each having symbol display and covering sections, positioned such that they do not block each other. The specification and drawings enable an embodiment having a plurality of separation display sections, each having symbol display and covering sections (§ [0026], Figs. 4, 6, 7).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3761

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2, 13, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith; Christopher A. (US 5798169) in view of Porchia; Jose et al. (US 5564834).

6. Regarding claims 13 and 16, Smith discloses a container (col. 2, lines 57-66, cols. 3-4, lines 63-5, Fig. 1, bag 10), comprising:

a separable partition wall section which is formed by heat-welding or bonding parts of container outer members opposed to each other (col. 5, lines 6-20, Fig. 1, seal 12 comprising adhesive 24 bonding parts together; cols. 8-9, lines 64-11, especially lines 9-11, wet ink dried with heat guns; Examiner interprets the limitation of “bonding” broadly to include the combination of heat-dried ink and adhesive);

a separation display section provided on an outer surface of a partition wall section wall of a container outer member (col. 5, lines 6-20, Fig. 1, combination of plastic strip 20 and ink layer 24; col. 9, lines 27-29, optional embodiment placing plastic strip 20 outside front wall 16);

the separation display section being visible from outside the container outer member opposed to the container outer member on which the separation display

Art Unit: 3761

section is provided, prior to separation of the partition wall section (col. 9, lines 46-57, col. 10, lines 7-9, Figs. 2A, 2B, plastic strip 20 and ink layer 24 visible through back wall 18 and clear adhesive 24);

the separation section being at least partially blocked by contents in the container when the partition wall section is separated (Figs. 2A, 4A, 4B, gap between opened seal 12 blocking ink layer 22);

the separation section having a symbol display section (Fig. 2A, ink layer 22);
and

a symbol covering section (Fig. 2A, plastic strip);

said symbol covering section being provided outside said symbol display section so as to cover and block the symbol display section so that the symbol display section cannot be visually recognized from outside the container outer member on which the separation display section is provided (col. 9, lines 29-33, col. 10, lines 27-42, especially lines 40-42).

Regarding a symbol covering section that blocks a symbol display section, Smith forms plastic strip 29 from high density polyethylene and includes a coloring agent (col. 8, lines 1-8; col. 10, lines 40-42). HDPE is a normally translucent plastic (see online article on HDPE, described as translucent), which becomes opaque when adding colors (see online encyclopedia article on plastic bottles, "HDPE is naturally translucent and flexible. The addition of color will make HDPE opaque although not glossy.") Additionally, Smith discloses plastic strip 20 as substantially opaque (col. 9, lines 29-33).

Examiner interprets the limitation of a "medical container" as intended use. That is, the language "medical container" does not add structure to the claimed device.

Art Unit: 3761

Additionally, bag 10 of Smith is capable of storing medical supplies, such as valuable or sensitive medicines that require secure, tamper-proof storage.

Smith discloses the invention substantially as claimed, see above. However, Smith lacks a plurality of alternating separation display sections as claimed [13, 16]. Instead, Smith discloses at most a single separation display section. Porchia discloses a thermoplastic bag with a closure (col. 1, lines 22-30, Fig. 1, bag 20), comprising:

- a separable partition wall section (col. 3, lines 34-40, Fig. 2, closure arrangement 25); and

- a plurality of separation display sections on each of the container outer members (col. 7, lines 41-50, Fig. 19, interrupted portions 111a, 112a);

- wherein the symbol display sections are positioned such that the symbol display sections on one of the container outer members are not visually blocked by the symbol display sections on the other of the container outer members (Fig. 19, interrupted portions 111a, 112a not blocking each other on opposing sides of the container outer members).

Porchia indicates clearly whether a closure has been opened by forming a single line when closed, and an alternating line when opened (col. 7, lines 45-50). Here, Porchia provides an unambiguous signal showing whether a closure has been opened. Additionally, Porchia provides an indicator visible from both sides of a closure. One would be motivated to modify Smith by providing separation display sections on each container outer member as taught by Porchia to indicate clearly whether a closure has been opened, and allow inspection from both sides.

Art Unit: 3761

7. Regarding claim 2, Smith discloses outer members made of synthetic resin film (col. 4, lines 19-21, bag wall preferably formed of a polyethylene plastic).

8. Regarding claim 14, Smith discloses a separation display section provided by printing on a film attached to an outer surface of a partition wall section of a container outer member (cols. 8-9, lines 64-11, printing on plastic strip 20; col. 9, lines 27-29, alternative embodiment of plastic strip attached to outer surface of front wall 16).

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith; Christopher A. (US 5798169) in view of Porchia; Jose et al. (US 5564834), further in view of Sperko; William A. et al. (US 5910138).

10. Regarding claim 3, Smith and Porchia disclose the invention substantially as claimed, see above. However, Smith and Porchia lack a multiple-chamber container as claimed [3]. Sperko discloses a medical container (col. 3, lines 21-37, col. 9, lines 60-67, Figs. 1, 2, container 10) comprising:

a separable partition wall section which is formed by heat-welding or bonding parts of container outer members opposed to each other (col. 7, lines 34-41, col. 17, lines 14-22, Figs. 1, 2, peelable seals 25, 26 formed by heated bars); and

[3] wherein the medical container is a multiple-chamber container which has a separable partition wall section formed by heat-welding parts of films opposed to each other and has a plurality of chambers partitioned by the partition wall (col. 17, lines 14-22, Figs. 1, 2, peelable seals 25, 26 formed by heated bars and separating container into a plurality of chambers).

Art Unit: 3761

Sperko forms a bag for an alternate use, namely storing and mixing medical fluids. One would have been motivated to modify Smith and Porchia in view of Sperko, since Smith calls for protecting valuable goods (col. 1, lines 14-22, bag contents maintained under tight security). Similar to a bag containing valuables, medicines require careful handling. Some medications are controlled substances and also require tight security. Additionally, care must be taken when remixing medicines for critically ill patients, which calls for a similar level of certainty.

Response to Arguments

11. Applicant's arguments filed 17 May 2010 with respect to the rejection(s) of the pending claims under 35 USC § 103 over Sperko, Hustad, Brochman and Porchia have been fully considered and are persuasive. Therefore, the rejection is withdrawn.

However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over Smith, Porchia and Sperko.

12. Applicant contends that Brochman fails to remedy the deficiencies of Sperko and Hustad, namely printing. Examiner cites Smith as teaching a printed film in the new grounds of rejection.

13. Applicant asserts that motivation is lacking to modify Sperko with an opaque portion, since this would hinder inspection of contents. Examiner instead cites Smith as teaching an opaque portion, namely HDPE plastic strip 20.

Art Unit: 3761

14. Applicant submits that Porchia fails to remedy the deficiencies of Sperko, Hustad, Brochman, namely alternating symbol display and covering sections. In the new grounds of rejection, Examiner cites Smith as teaching the claimed symbol display and covering sections, and modifies these as an alternating pattern as taught by Porchia.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

◆ Smith; Christopher A. US 5631068

◆ Fukushima; H. et al. US 7293646

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3761

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to:

19. Adam Marcetich

20. Tel 571-272-2590

21. Fax 571-273-2590

22. The Examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/
Examiner, Art Unit 3761

/Leslie R. Deak/
Primary Examiner, Art Unit 3761
20 June 2010